

**DECISION**

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PLM 2

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-203928**DATE:** September 11, 1981**MATTER OF:** Irving Kintish - Retroactive Temporary  
Promotion

**DIGEST:** Employee appeals action of Claims Group which denied retroactive temporary promotion and backpay under Turner-Caldwell, 56 Comp. Gen. 427 (1977), on basis that detail was less than 240 days. Disallowance is affirmed as details commencing after February 15, 1979, are covered by FPM Bulletin 300-48, March 19, 1979, which permits agencies to detail employees for up to 240 days without OPM approval.

By a letter dated June 18, 1981, Mr. Irving L. Kintish appealed the action of our Claims Group, AFMD, in Settlement Certificate No. Z-2831096, issued June 10, 1981. That action disallowed his claim for a retroactive temporary promotion and backpay from grade GS-12 to grade GS-13 between August 11 and November 18, 1980. For the reasons stated herein we affirm the disallowance of the Claims Group.

Mr. Kintish, a General Engineer, GS-12, with the United States Army Armament Research and Development Command, Dover, New Jersey, was detailed to the position of Value Engineer, GS-13, on March 24, 1980. On April 13, 1980, he received a temporary promotion for 120 days, which terminated on August 10, 1980. However, he continued to perform the duties of the GS-13 position until November 21, 1980, and requested backpay for the 103-day period from August 11 through November 21, 1980.

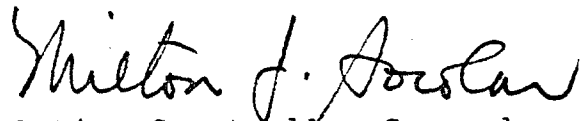
The Command's Civilian Personnel Office granted Mr. Kintish 3 days' backpay for the period November 19-21, 1980, on the basis of our decision Turner-Caldwell, 56 Comp. Gen. 427 (1977), which held that employees who are detailed to a higher grade position for more than 120 days without Civil Service Commission (now Office of Personnel Management) approval are entitled to a retroactive temporary promotion and backpay beginning on the 121st day of the detail. Mr. Kintish's 120-day waiting period consisted of 20 days from March 24 to April 12, 1980, and 100 days following his temporary promotion (the period of his temporary promotion being excluded). Thus, Mr. Kintish was granted a temporary promotion for the last 3 days of his detail, November 19-21, 1980.

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In considering, Mr. Kintish's appeal from the Civilian Personnel Office's determination, our Claims Group noted that the Office of Personnel Management had changed its regulations concerning details upon which Turner-Caldwell was based. FPM Bulletin No. 300-48, issued March 19, 1979, delegated to agencies, effective February 15, 1979, the authority to detail employees for up to 240 days without prior OPM approval. We noted in Joyce R. Morrison, B-197206, August 12, 1980, that this change affected Turner-Caldwell remedies for details commencing after February 15, 1979, by increasing the waiting period to 240 days. Apparently the Command's Civilian Personnel Office was unaware of this recent change when it allowed Mr. Kintish an additional 3-days' backpay. Therefore, the Claims Group in its settlement of June 10, 1981, found Mr. Kintish was not entitled to the 3-day retroactive temporary promotion and backpay for November 19 to 21 and recommended that the overpayment be considered for waiver under the provisions of 5 U.S.C. 5584.

In his appeal Mr. Kintish states that he performed the higher grade GS-13 duties for more than 240 days when the period of his temporary promotion is taken into account. For this reason, he feels that he is entitled to additional compensation. As explained earlier, for details after February 15, 1979, an employee must be detailed to a higher grade position for 240 days without additional compensation before he is eligible for backpay. The 240 days is to be computed excluding any period during which the employee was temporarily promoted to that higher grade position. See 58 Comp. Gen. 401 (1979). Since Mr. Kintish has not met this requirement, he is not entitled to a retroactive temporary promotion. Accordingly, the action of our Claims Group is affirmed.

With regard to Mr. Kintish's request for information regarding the next higher level of adjudication, there is no administrative appeal from decisions of the Comptroller General. However, Federal courts have jurisdiction over compensation matters cognizable by the General Accounting Office.



Acting Comptroller General  
of the United States